

CITY of ALBUQUERQUE

SEVENTEENTH COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

1 ORDINANCE

2 GRANTING A WATER UTILITY FRANCHISE TO THE ALBUQUERQUE-BERNALILLO
3 COUNTY WATER UTILITY AUTHORITY TO DEVELOP, LAY, RE-LAY, CONSTRUCT,
4 MAINTAIN, OPERATE AND REMOVE PIPES, SYSTEMS AND OTHER STRUCTURES
5 AND FACILITIES FOR THE PURPOSE OF DISTRIBUTING WATER AND
6 WASTEWATER SERVICE WITHIN RIGHTS-OF-WAY OF THE CITY OF
7 ALBUQUERQUE; ESTABLISHING THE TERMS AND CONDITIONS OF THE
8 FRANCHISE; ESTABLISHING CERTAIN REMEDIES FOR THE VIOLATION OF THE
9 FRANCHISE.

10 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE City of
11 Albuquerque:

Section 1. **SHORT TITLE.** This ordinance may be cited as the
Albuquerque-Bernalillo County Water Utility Authority Franchise Ordinance.

14 Section 2. LEGISLATIVE FINDINGS. The Council finds it necessary
15 to grant a Franchise to the Albuquerque-Bernalillo County Water Utility Authority
16 ("Authority") to develop, lay, re-lay, construct, maintain, operate and remove
17 pipes, systems, works, lift stations, manholes, storage tanks, reservoirs,
18 appliances, and other structures and facilities, on, over, under, along and across
19 all Rights-of-way in or owned by the City for the purpose of providing water and
20 wastewater services all as more specifically set out below.

1 Section 3. DEFINITIONS. For the purpose of this ordinance, the
2 following terms, phrases, words and their derivations shall have the meaning
3 given in this section. When not inconsistent with the context, words used in the
4 present tense include the future tense, words in the plural number include the
5 singular number, and words in the singular number include the plural number.
6 The word "shall" is mandatory and "may" is permissive. Words not defined in this
7 section shall be given their common and ordinary meaning.

8 AUTHORITY. The Albuquerque-Bernalillo County Water Utility
9 Authority as established by 72-1-10 NMSA 1978 (2003 Supp.) (as amended Laws
10 2005, Chapter 345) or successor statute.

11 CITY. The City of Albuquerque, a municipal corporation of the State of New
12 Mexico.

13 COUNCIL. The legislative body of the City of Albuquerque sometimes
14 referred to as "City Council".

15 DIRECTOR. The Director of the Department of Municipal Development of
16 the City of Albuquerque or his or her designee.

17 FACILITIES. Are and include, but are not limited to, plant, works, systems,
18 improvements and equipment of the Authority such as pipes, hydrants, wells,
19 systems, lift stations, manholes, tanks, reservoirs, underground links, meters,
20 pumping equipment and sewer mains.

21 FRANCHISE. The authorization granted herein to use Rights-of-way to
22 construct, operate, and maintain water and wastewater systems in the City or any
23 portion or portions thereof.

24 GROSS REVENUE. Includes any and all revenue received by the Authority
25 from the sale of Water or Wastewater to its customers within the limits of the City,
26 as those limits may be extended from time to time including the value of the
27 Water and Wastewater served and consumed by the Authority in the City. Gross
28 Revenue shall not include amounts received by the Authority as a tax, fee or
29 assessment of general applicability collected by the Authority for pass-through to
30 another governmental agency, reimbursements from third parties for expenses,
31 bad debt, revenue received by the Authority upon which the City already collects a
32 franchise fee from another utility, utility expansion charges or to refunds or

1 credits. The Gross Revenue shall be measured and monitored periodically as set
2 out below.

3 LINE EXTENSION. Any extension of distribution, transmission or collection
4 facilities into areas within the boundaries of the City not then served by the
5 Authority.

6 MAYOR. The Mayor of the City of Albuquerque or his/her designated
7 representative.

8 MEMORANDUM OF UNDERSTANDING. That Memorandum of
9 Understanding dated January 21, 2004, as amended April 7, 2004, and any
10 subsequent amendments thereto, between the City, the County of Bernalillo and
11 the Authority and entered into for the purpose, among other things, of adopting
12 certain City policies and procedures and recognizing the City's continued
13 management and operation of the Facilities for the time period set out in the
14 Memorandum of Understanding ("MOU").

15 PUBLIC PLACE. Any property that is owned or under the control of the City
16 that is not a Right-of-way but may be dedicated for public use including but not
17 limited to, buildings and parks.

18 REASONABLE ATTORNEY FEES. Charges for legal representation as
19 may be incurred by the City or the Authority.

20 RIGHTS-OF-WAY. The surface of and the space above and below any
21 street, road, avenue, highway, freeway, bridge, lane, path, alley, court, sidewalk,
22 parkway, platted or other public utility easement, right-of-way or other easement,
23 excluding railroad rights-of-way, parks and airport property, of the City now or
24 hereafter existing within or owned by the City which may be properly used for
25 water and wastewater systems. To the extent the Authority occupies an easement
26 granted by the City to the Authority on any Public Place that permits use and
27 occupation of such Public Place, the terms and conditions of that easement shall
28 govern and control the Authority's occupation thereof.

29 STORM DRAINAGE FACILITIES. Includes all City owned channels
30 (lined or unlined), pipe, manholes, inlets, and all other structures that handle
31 storm run-off.

32 TREASURER. The Treasurer of the City of Albuquerque.

1 WATER. Residential, multi-family, commercial, industrial and institutional
2 water, systems and services.

3 WASTEWATER. Residential, multi-family, commercial, industrial,
4 institutional and wholesale-special contracts water, systems and services.

5 Section 4. RIGHTS AND PRIVILEGES OF AUTHORITY.

6 (A) Permission to rent and use. There is hereby granted by the City to
7 the Authority, subject to the terms, conditions and limitations contained in this
8 Franchise ordinance and the MOU (which document shall control in the event of a
9 conflict with this Franchise during the term of the MOU) nonexclusive permission
10 to rent, use and occupy and the franchise right, privilege and authority to
11 construct, purchase, acquire, locate, maintain, operate and extend into, within,
12 and through the City, Facilities for the purpose of distributing water and
13 wastewater service, of any nature, with the right and privilege for the period and
14 upon the terms and conditions hereinafter specified, to sell, furnish and distribute
15 any or all of said products to the City and its inhabitants, by means of its Facilities,
16 on, over, under, along and across all Rights-of-way. Provided, however, that the
17 Authority's construction plans for line extensions within the limits of the City,
18 prepared by either a developer or the Authority, shall be submitted to the City
19 Development Review Committee for review of any impact the line extension may
20 have on City facilities. Additionally, the Authority shall provide notice of any line
21 extension policy change to the City pursuant to Section 20 herein.

22 (B) Indemnification. Subject to the terms and conditions of the MOU,
23 the Authority shall indemnify, defend and hold the City harmless from and against
24 claims, demands, liens and all liability or damage of whatsoever kind on account
25 of or arising from the grant of this Franchise, the exercise by the Authority of the
26 related rights, or from the operations of the Authority within the City, and shall
27 pay the costs of defense plus reasonable attorneys' fees. The Authority shall be
28 responsible for damages to any property in the Rights-of-way as a result of
29 Authority activities. The City shall give prompt written notice to the Authority of
30 any claim, demand or lien with respect to which the City seeks indemnification
31 hereunder and unless in the City's judgment a conflict of interest may exist
32 between the City and the Authority with respect to such claim, demand or lien,

1 permit the Authority to assume the defense of such claim, demand, or lien with
2 counsel satisfactory to the City. If such defense is not assumed by the Authority,
3 the Authority shall not be subject to any liability for any settlement made without
4 its consent. Notwithstanding any provision hereof to the contrary, the Authority
5 shall not be obligated to indemnify, defend or hold the City harmless to the extent
6 any claim, demand or lien arises out of or in connection with any negligent act or
7 failure to act of the City or any of its officers or employees acting on behalf of the
8 Authority pursuant to the MOU.

9 (C) Remedies. In the event the Authority or the City fails to fulfill any of
10 their respective obligations under this Franchise, the City or the Authority,
11 whichever the case may be, will have a breach of contract claim and remedy
12 against the other in addition to any other remedy provided by law, provided that
13 no remedy which would have the effect of amending the specific provisions of
14 this Franchise shall become effective without such action which would be
15 necessary to formally amend the Franchise

16 Section 5. TERM, EFFECTIVE DATE.

17 (A) Term. This Franchise ordinance, and the rights, privileges and
18 authority granted hereunder, shall continue for a period of ten (10) years from the
19 effective date.

20 (B) Effective date. This ordinance shall become effective from and
21 after its passage and publication as provided by NMSA 1978, § 3-42-1, or
22 successor statute; provided that the Authority, either before or within 60 days
23 shall have passed legislation also approving this Franchise.

24 Section 6. FRANCHISE NOT EXCLUSIVE. The right to use and occupy
25 said Rights-of-way for the purposes herein set forth is not and shall not be
26 deemed to be, an exclusive franchise, and the City reserves the right to itself to
27 make or grant a similar use of the said Rights-of-way to any other person, firm, or
28 corporation.

29 Section 7. PERFORMANCE AND MODIFICATION.

30 The Authority and the City agree to take all reasonable and necessary
31 actions to assure that the terms of the Franchise are performed, and neither will
32 take any action to secure modification of this Franchise before any court of

competent jurisdiction before having attempted to negotiate in good faith any modifications either party may deem necessary.

Section 8. FRANCHISE FEE.

(A) Fee and rental. As consideration for this Franchise, which provides for the rental and use by the Authority of the Rights-of-way, which are valuable public properties acquired and maintained by the City at great expense to its taxpayers and citizens, the Authority shall pay to the City a franchise fee in the amount of four percent of the annual Gross Revenue within the City limits, as defined in Section 3 of this Franchise ordinance. As consideration for this Franchise, the Authority and City agree to the following:

1. The Authority shall maintain all current fire protection waterline connections at the main waterline and allow for all required new fire protection connections at the main waterline for City facilities;
2. The Authority shall provide water for fire suppression at no cost to the City. The parties further agree to establish a methodology or process for estimating water usage for fire suppression;
3. The Authority shall maintain all fire hydrants to operable condition, including periodic painting, for use by the City and the City will inspect, lubricate and flow the hydrants annually. The City will notify the Authority of any defects observed at the time of the inspection. The Authority will notify the City when they receive the documentation of observed defects and when those defects have been corrected. At least quarterly, the Authority will notify the City of the location of all new or relocated hydrants. The Authority will maintain an adequate supply of meters in order for contractors to use fire hydrants for construction purposes.
4. For dispatch services, Authority operators shall answer all after-hour calls and contact the On-call foreman for the appropriate City department. If the foreman cannot be reached, the Authority operator shall contact 311;

[+Bracketed Material+] - New
[-Bracketed Material-] - Deletion

1 5. The Authority shall provide billing services for the Solid Waste
2 Management Department including any inserts in the bills at historically
3 based cost of service;

4 6. The Authority shall provide the City with vactors or by-pass pumps as
5 requested by the City to aid in pumping out storm drainage systems at
6 the cost of providing such equipment; and

7 7. The Authority shall provide at least one supervisor for all City
8 emergency operations center calls at the cost of providing such
9 supervisor.

10 The franchise fee and services indicated hereinabove, shall constitute the only
11 consideration by the Authority to the City for the Authority's use and occupancy of
12 the Rights-of-way. Said payments shall be in lieu of any and all other franchise
13 fee, license, privilege, occupation, excise or revenue taxes (except special
14 assessments of general applicability for local improvements on real property of
15 the Authority, fees for barricade and excavation permits, sidewalk permits, curb
16 and gutter permits or other City-required permitting fees) imposed generally by
17 the City on any business, revenue, property, facilities or other appurtenances or
18 any part thereof within the City during the term of this Franchise ordinance.

19 (B) Payment terms. Commencing the month following the month this
20 Franchise ordinance becomes effective, the franchise fee shall be paid monthly on
21 the 25th day of each month; such fee shall be for Gross Revenues received by the
22 Authority for the preceding month. Nothing herein shall preclude the Authority
23 and the City from agreeing to a revised payment schedule.

24 (C) Reconciliation. Subject to the terms and conditions of the MOU,
25 and commencing on or before the first day of the thirteenth month following the
26 effective date of this Franchise, the Authority shall submit to the Treasurer, a
27 statement of the franchise fee actually due to the City based upon the actual
28 Gross Revenue for the year, together with a check for any amount due from the
29 Authority or a statement for any amount due from the City. In the event any sums
30 are owed by the City or Authority, such amount shall include interest from the
31 last day of the franchise year computed at the rate being paid for customer
32 security deposits being held by the Authority. Within 30 days from the

1 submission of the statement of franchise fee owing, or within such reasonable
2 additional time as he or she may request, the Treasurer shall investigate the
3 statement and determine the accuracy of the amounts reported. However, neither
4 payment of the franchise fee nor failure to make such investigation shall estop
5 the City in any way or prevent subsequent investigation or return of any amount
6 properly due.

7
8 (D) Claims. In the event it is claimed by the City that the amount of
9 the franchise fee paid hereunder is insufficient, and such insufficiency is not the
10 result of any collection, distribution or reporting error of the City in accordance
11 with its required performance pursuant to the MOU, or in the event the Authority
12 claims that the amount is excessive, and the parties cannot agree, the City and the
13 Authority shall attempt to informally negotiate a resolution. In the event that
14 negotiations fail, the dispute shall be submitted to non-binding mediation. The
15 party making the demand shall submit the dispute to the American Arbitration
16 Association ("AAA") pursuant to the Commercial Mediation Rules of the AAA in
17 effect at the time or as otherwise agreed to by the parties.

18 (E) Contract payment. In the event that the franchise fee set forth in this
19 Franchise ordinance is declared illegal, unconstitutional or void for any reason by
20 any court, the Authority shall be contractually bound to pay the City, at the same
21 times and in the same manner as provided for herein, an aggregate amount equal
22 to the amount which would have been paid as a franchise fee.

23 Section 9. INSPECTION AND RETENTION OF RECORDS.

24 (A) Audit. Subject to the terms and conditions of the MOU, the City shall
25 have the right to review or audit all books and records of the Authority in
26 accordance with generally accepted accounting and auditing principles regarding
27 any amounts which may be paid under this Franchise ordinance but shall not
28 have the right, pursuant to the MOU, to change or otherwise redetermine the
29 revenue components comprising the franchise fee base, so long as the Authority
30 has not altered the revenue components of the franchise fee. This right includes
31 the right to review and audit all books and records of revenue not included in the
32 calculation of the fee paid, but which may be considered by the City to be subject

1 to a franchise fee. The City shall give written notice to the Authority of any
2 additional amount claimed to be due to the City as a result of any review. The
3 additional amount due, if any, shall be paid within 30 days following
4 determination that such amount is due and payable,

5 (B) Record Keeping. Subject to the terms and conditions of the MOU,
6 the Authority and City agree that each shall keep complete and accurate books
7 and records of its business and operations pursuant to this Franchise in
8 accordance with generally accepted accounting principles. Upon termination of
9 the MOU, the Authority and City agree that Authority records shall be kept on a
10 City-specific basis for purposes of calculating franchise fees. All such books,
11 records and accounts shall be retained for a period of six years in accordance with
12 NMSA 1978, § 37-1-3. The Authority shall make such records as are necessary to
13 complete an audit available for inspection by the City at its principle place of
14 business upon thirty days notice.

15 Section 10. CITY REGULATION. The City expressly reserves, and the
16 Authority expressly recognizes, the City's right and duty to adopt, from time to
17 time, in addition to the provisions herein contained, such Charter provisions,
18 ordinances and rules and regulations as the City may deem necessary in the
19 lawful exercise of its police power for the protection of the health, safety and
20 welfare of its citizens and their properties.

21 Section 11. CITY RIGHTS.

22 (A) Enforcement. The Mayor, or his or her designee, is the official of
23 the City having full power and authority to take appropriate action for and on
24 behalf of the City and its inhabitants to enforce the provisions of this Franchise
25 and to investigate any alleged violations or failures of the Authority to comply
26 with the provisions hereof or to adequately and fully discharge its responsibilities
27 and obligations hereunder. The failure or omission of the Mayor or the City to so
28 act shall not constitute any waiver or estoppel.

29 (B) The Authority and City agree to meet at regular intervals to share and
30 coordinate information relative to the operation and repair of the facilities of the
31 City or of the Authority located in Rights-of-way.

1 Section 12. PLAN, DESIGN, CONSTRUCTION COORDINATION AND
2 INSTALLATION OF AUTHORITY FACILITIES. Subject to the terms and conditions
3 of the MOU (which document shall control in the event of a conflict with this
4 Franchise) the City and Authority agree as follows:

5 (A) Before the Authority may conduct underground work involving
6 excavation, renovation, new construction or major relocation work in any Rights-
7 of-way the Authority shall first notify the City not less than five working days prior
8 to commencement of the work and shall comply with any special conditions
9 relating to location, scheduling, coordination and public safety. The Authority
10 shall file maps and drawings with the Director showing the location of any
11 proposed construction or extension of its facilities and services in any Rights-of-
12 way of the City. Such proposed construction work to be done by the Authority
13 shall be performed and coordinated in a safe manner subject to the approval of
14 the Director and in accordance with applicable federal and state laws and city
15 ordinances, regulations and permit requirements now or hereafter existing
16 including the Barricade and Street Excavation Ordinance, as that ordinance may
17 be amended from time to time.

18 (B) Construction forecast. On or before the first day of the 6th month of
19 each Franchise year, the City and the Authority agree to meet and exchange three
20 year construction forecasts, together with such additional information as the City
21 and the Authority deem appropriate relating to projects planned within the City.
22 The City and Authority shall hold such meetings as they deem necessary to
23 exchange additional information with a view toward coordinating their respective
24 activities in these areas where such coordination will prove mutually beneficial to
25 the public by minimizing disruption and costs to the public. The Authority will
26 comply with all building and zoning codes and assure that aesthetic and other
27 relevant planning principles have been given due consideration. It is recognized
28 that, notwithstanding the foregoing, the City retains absolute discretion over the
29 timing and all other aspects of its proposed projects. The parties will make
30 reasonable efforts to allow each party's work to be incorporated in the other's
31 respective projects. The Authority will not cut or otherwise disturb any new or
32 rehabilitated pavement within two years of its placement, except or unless, (1) the

1 Authority repaves such cut or disturb to specifications as may be required by the
2 City, or (2) in emergency conditions. Notwithstanding the foregoing, if an
3 Authority cut or disturbance is required in any new or rehabilitated pavement
4 within sixty (60) days of the placement of such new or rehabilitated pavement,
5 and the Authority's cut or disturbance is caused or occasioned by the City's
6 damage to Facilities created by the placement of new or rehabilitated pavement,
7 then, the Authority shall not be responsible for any and all costs associated with
8 a subsequent repavement.

9 (C) Interference; permits. All facilities constructed by the Authority
10 within Rights-of-way of the City shall be located so as to cause minimum
11 interference with public use of streets, alleys and other public ways and shall be
12 maintained in good repair and condition. Facilities located on, upon, over and
13 under Rights-of-way shall be constructed, installed, maintained, cleared of
14 vegetation, renovated or replaced in accordance with resolutions, ordinances,
15 rules and regulations of general application as may be adopted by the City to
16 control and monitor such activities. The Authority will acquire and pay for
17 permits in accordance with such rules and regulations as the City deems
18 appropriate, and the City may inspect the manner of such work and require
19 remedies as may be necessary to assure compliance. It is understood that this
20 work involves the health, safety and welfare of the community and from time to
21 time must be done under circumstances which will make the prior acquisition of a
22 permit infeasible, and in those cases the permit shall be applied for by the
23 Authority on the next working day.

24 (D) Compliance with laws. The Authority shall take measures which will
25 result in its facilities meeting the standards required by applicable federal and
26 state water pollution laws. Upon the City's request, the Authority will provide the
27 City with copies of any reports submitted to these agencies in compliance with
28 such laws.

29 (E) Joint use. Upon reasonable request by the City or the Authority and
30 to the extent the City or Authority can do so, each will grant joint use of its
31 property which it now, or in the future, owns or has an interest in within the
32 Authority's or the City's service territory to each other for purposes including, but

1 not limited to, parks, drainage facilities, bikeways, traffic conduits, mass transit
2 corridors, storm sewerlines, pedestrian area parking, open spaces and water,
3 waste water, electric, cable, and natural gas distribution, provided that neither the
4 City nor the Authority shall be required to make such an offer in any circumstance
5 where such offer would interfere with the current use of the property.
6 Compensation for such joint use shall be as negotiated by the City and the
7 Authority. If joint use is accepted by the City or Authority, then any improvements
8 deemed appropriate shall be made by the at the requesting party's sole expense.

9 (F) Maintenance. The Authority shall be responsible for the maintenance
10 of the property within reasonable proximity of and upon which the Authority
11 maintains above-ground facilities, including the removal of weed and litter.

12 (G) ADA. The Authority shall insure its facilities in Rights-of-way are
13 located and constructed in a manner such that access is not impaired in
14 compliance with the Americans with Disabilities Act (ADA). Following notice by
15 the City of an ADA construction problem, the Authority shall have 60 days or other
16 reasonable time to remedy the problem. In the event the City and the Authority
17 cannot agree that a problem exists, any dispute shall be submitted to mediation
18 pursuant to Section 8.(D) herein.

19 (H) Public Places. The City and Authority agree that no Authority facilities
20 will be placed in Public Places without the express written consent of the City.
21 The City and Authority further agree that in the event the City requests service or
22 the placement of new or added Authority facilities in any Public Place, the City
23 shall bear all costs necessary for such placement. And, the City and Authority
24 further agree that in the event the City requests service or the placement of new
25 or added Authority Facilities in any Public Place, such facilities will require the
26 grant of a permanent easement to the Authority.

27 Section 13. AUTHORITY EXCAVATIONS AND RELOCATIONS.

28 Subject to the terms and conditions of the MOU (which document shall control in
29 the event of a conflict with this Franchise), the City and Authority agree as follows:

30 (A) Placement of facilities. The Authority shall have the right to excavate
31 in, occupy and use any and all Rights-of-way after obtaining appropriate
32 excavation permits or other review in accordance with Section 12 herein from the

1 City The Authority shall not, pursuant to this Franchise, place any of its facilities,
2 on, over, under or within any City park, duly designated as such by the City, but
3 nothing herein contained shall preclude the City from granting a permanent
4 easement therefore in accordance with Section 12(H) above. The Authority shall
5 not place any of its facilities, on, over, under or within the median portion of any
6 boulevard or parkway without first having obtained the written permission of the
7 City.

8 (B) Location and relocation expense. Any location or relocation of the
9 Authority's facilities in the Rights-of-way reasonably required, caused or
10 occasioned by any City project necessitated by the health and safety of the public
11 or as may be required by projects approved by the City's Capital Improvements
12 Program, including the installation of storm drainage, landscaping, or traffic
13 signal facilities, and road reconstruction shall be at the cost of the Authority.
14 However, in the event of any such relocation, the parties agree that all reasonable
15 engineering or other accommodation shall be made to keep such relocations to a
16 minimum number in any given year and minimal cost. The City and the Authority
17 agree to meet and coordinate with respect to any project such that, when timing
18 allows, the Authority may include the costs of any location or relocation in the
19 next budget and/or bond cycle. The Authority shall reconstruct, replace or
20 restore any street, alley, or public way or place, in a timely fashion, and any
21 sewer, storm drainage, traffic signalization facilities, or other facility of the City
22 disturbed by the Authority, without cost to the City, to a condition acceptable to
23 the City consistent with reasonable standards of safety and appearance. Any
24 facility so disturbed by the Authority shall be reconstructed, replaced, or restored
25 only under the supervision of City personnel. Any such relocation shall be
26 accomplished as expeditiously as possible.

27 (C) The Authority shall comply with all City ordinances and resolutions
28 regarding lane closures and traffic control.

29 (D) Abandoned facilities. From and after the effective date of this
30 Franchise, the Authority is required to remove any and all abandoned facilities
31 located in Rights-of-way at Authority expense as soon as practicable, but not later
32 than 90 days following request by the City.

1 Section 14. WATER AND WASTEWATER SERVICE.

2 In accordance with the terms hereof, the Authority shall furnish water and
3 wastewater service within the corporate limits of the City or any additions thereto,
4 to the City and to the inhabitants thereof, and to any person or persons or
5 corporation doing business in the City or any additions thereto.

6 Section 15. CONSERVATION.

7 The City and the Authority recognize and agree that conservation programs
8 offer opportunities for the efficient use of water and reduction of customers' costs.
9 The Authority recognizes and shares the City's strong desire to advance the
10 implementation of cost-effective conservation programs that provide direct
11 opportunities to the Authority's customers to manage more efficiently their use of
12 water and thereby create the opportunity to reduce their costs.

13 Section 16. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

14 The City and Authority are committed to stimulating and strengthening the
15 participation of minorities and women and are also committed to the principle
16 that the success and economic well-being of the City and Authority are related
17 closely to the economic strength and vigor of the communities and people it
18 serves.

19 Section 17. SYSTEM TO REMAIN IN PLACE. In the event this Franchise is
20 not renewed at the expiration of its term or the Authority terminates any service
21 provided herein for any reason whatsoever, the Authority shall have no right to
22 remove the systems, pending resolution of the disposition of the system. The
23 Authority agrees it will not withhold any temporary services necessary to protect
24 the public, and in such event shall be entitled only to monetary compensation in
25 no greater amount than it would have been entitled to were such services
26 provided during the term of this Franchise. Only upon receipt of written notice
27 from the City stating that the City has adequate alternative sources to provide for
28 the people of the City shall the Authority be entitled to remove any or all of said
29 systems in use under the terms of this Franchise.

30 Section 18. BREACH/INDEMNIFICATION.

31 The City shall indemnify, defend and hold the Authority harmless from and

1 against claims, demands, liens and all liability or damage of whatsoever kind on
2 account of or arising from (1) an alleged breach of this Franchise by the City and
3 caused or occasioned by the City's performance under the MOU, and (2) any
4 exercise of a City right granted under this Franchise and shall pay the costs of
5 defense plus reasonable attorneys' fees in either instance.

6 Section 19. AMENDMENT. At any time during the term of this
7 Franchise, the City through its City Council, or the Authority may propose
8 amendments to the franchise by giving 30 days written notice to the other of the
9 proposed amendment(s) desired, and both parties thereafter, through their
10 designated representatives, will, within a reasonable time, negotiate in good faith
11 in an effort to agree upon mutually satisfactory amendment(s). No amendment or
12 amendments to this franchise shall be effective until mutually agreed upon by the
13 City and the Authority and thereafter submitted to and approved by the City
14 Council.

15 Section 20. PUBLIC PURPOSE. All of the regulations provided in this
16 ordinance are hereby declared to be for a public purpose and the health, safety,
17 and welfare of the general public. Any member of the governing body or City
18 official or employee charged with the enforcement of this ordinance, acting for the
19 City in the discharge of his duties, shall not thereby render himself personally
20 liable; and he is hereby relieved from all personal liability for any damage that
21 might accrue to persons or property as a result of any act required or permitted in
22 the discharge of his or her said duties. Neither the City nor the Authority by
23 accepting this Franchise waives its right to seek all appropriate legal and equitable
24 remedies as allowed by law upon violation of the terms of this Franchise,
25 including seeking injunctive relief in a court of competent jurisdiction. Such right
26 to injunctive relief is expressly reserved and all terms and provisions hereof shall
27 be enforceable through injunctive relief.

28 Section 21. NOTICES. For the purpose of this ordinance, notice to the
29 City will be to:

30 Mayor
31 City of Albuquerque
32 P.O. Box 1293

1 Albuquerque, New Mexico 87103

2 With a copy to:

3 City Attorney, Utility Counsel

4 City of Albuquerque

5 P.O. Box 2248

6 Albuquerque, New Mexico 87103

7 Notice to the Authority will be to:

8 Albuquerque Bernalillo Water Utility Authority

9 Executive Director

10 Albuquerque, New Mexico 87114

11 Notice will be effective upon delivery at the above addresses until the City or
12 Authority notifies the other, in writing, of a change in the address.

13 Section 22. VENUE. This ordinance shall be construed under and in
14 accordance with the laws of the State of New Mexico, and all obligations of the
15 parties hereunder are performable in Bernalillo County, New Mexico. In the event
16 that any legal proceeding is brought to enforce the terms of this Franchise, the
17 same shall be brought in Bernalillo County, New Mexico.

18 Section 23. NO WAIVER. Neither the City nor the Authority shall be
19 excused from complying with any of the terms and conditions of this Franchise by
20 any failure of the other, or any of its officers, employees, or agents, upon any one
21 or more occasions to insist upon or to seek compliance with any such terms and
22 conditions.

23 Section 24. COMPILATION. This Ordinance shall be incorporated and
24 made a part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

25 Section 25. EFFECTIVE DATE. This ordinance shall become effective
26 from and after its passage and publication as provided by NMSA 1978, § 3-42-1, or
27 successor statute; provided that the Authority, within 60 days shall have passed
28 legislation also approving this franchise.

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